INDEX.

ACCIDENT.

See EQUITY, 5.

ADMIRALTY.

1. In the admiralty and maritime law of the United States the following propositions are established by the decisions of this court.
   (*a*) For necessary repairs or supplies furnished to a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty;
   (*b*) For repairs or supplies in the home port of the vessel, no lien exists, or can be enforced in admiralty, under the general law independently of local statute;
   (*c*) Whenever the statute of a State gives a lien, to be enforced by process *in rem* against the vessel, for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and therefore may be enforced in admiralty in the courts of the United States;
   (*d*) This lien, in the nature of a maritime lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States, sitting in admiralty. *The J E. Rumbell*, 1.
2. In the admiralty courts of the United States, a lien upon a vessel for necessary supplies and repairs in her home port, given by the statute of a State, and to be enforced by proceedings *in rem* in the nature of admiralty process, takes precedence of a prior mortgage, recorded under section 4192 of the Revised Statutes. *Ib.*

ACCORD AND SATISFACTION.

See INDIAN, 4.

ARKANSAS.

See JURISDICTION, B, 5.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

See LOCAL LAW, 2.

BANK.

A bank in Ohio contracted with a bank in Pennsylvania, to collect for it at par at all points west of Pennsylvania, and to remit the 1st, 11th and 21st of each month. In executing this agreement the Pennsylvania Bank stamped upon the paper forwarded for collection, with a stamp prepared for it by the Ohio Bank, an endorsement "pay to" the Ohio Bank "or order for collection for" the Pennsylvania Bank. The Ohio Bank failed, having in its hands, or in the hands of other banks to which it had been sent for collection, proceeds of paper sent it by the Pennsylvania Bank for collection. A receiver being appointed, the Pennsylvania Bank brought this action to recover such proceeds. *Held*,

(1) That the relation between the banks as to uncollected paper was that of principal and agent, and that the mere fact that a sub-agent of the Ohio Bank had collected the money due on such paper was not a commingling of those collections with the general funds of the Ohio Bank, and did not operate to relieve them from the trust obligation created by the agency, or create any difficulty in specially tracing them,

(2) That if the Ohio Bank was indebted to its sub-agent, and the collections, when made, were entered in their books as a credit to such indebtedness, they were thereby reduced to possession, and passed into the general funds of the Ohio Bank;

(3) That by the terms of the arrangement the relation of debtor and creditor was created when the collections were fully made, the funds being on general deposit with the Ohio Bank, with the right in that bank to their use until the time of remittance should arrive. *Commercial Bank* v *Armstrong*, 50.

See INTERNAL REVENUE, 1.

BONA FIDE PURCHASER.

See DEED, 1, 2;
EQUITY, 3.

BOUNDARY.

1. The boundary line between the States of Virginia and Tennessee, which was ascertained and adjusted by commissioners appointed by and on behalf of each State, and marked upon the surface of the ground between the summit of White Top Mountain and the top of the Cumberland Mountains, having been established and confirmed by the State of Virginia in January, 1803, and by the State of Tennessee in November, 1803, and having been recognized and acquiesced in by both parties for a long course of years, and having been treated by Congress as the true boundary between the two States, in its district-

ing them for judicial and revenue purposes, and in its action touching the territory in which federal elections were to be held and for which federal appointments were to be made, was a line established under an agreement or compact between the two States, to which the consent of Congress was constitutionally given, and, as so established, it takes effect as a definition of the true boundary, even if it be found to vary somewhat from the line established in the original grants. *Virginia* v. *Tennessee*, 503.

2. The history of the Royal Grants, and of the Colonial and State Legislation upon this subject reviewed. *Ib.*
3. An agreement or compact as to boundaries may be made between two States, and the requisite consent of Congress may be given to it subsequently, or may be implied from subsequent action of Congress itself towards the two States; and when such agreement or compact is thus made, and is thus assented to, it is valid. *Ib.*
4. What "an agreement or compact" between two States of the Union is, and what "the consent of Congress" to such agreement or compact is, within the meaning of Article I. of the Constitution, considered and explained. *Ib.*
5. A boundary line between States or Provinces which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive. *Ib.*

CASES AFFIRMED.

This case is affirmed on the authority of *United States* v *Alexander*, 148 U. S. 186. *United States* v *Truesdell*, 196.

Woodruff v. *Okolona*, 57 Mississippi, 806, approved and followed. *Barnum* v. *Okolona*, 393.

See JURISDICTION, B, 3.

CASES DISTINGUISHED.

Acton v. *Blundell*, 12 M. & W 324, distinguished from this case. *United States* v *Alexander*, 186.

Kanouse v. *Martin*, 15 How. 98, distinguished. *Pennsylvania Co.* v. *Bender* 255.

Bridge Company v *United States*, 105 U. S. 470, distinguished from this case. *Monongahela Navigation Co.* v. *United States*, 312.

Stutsman County v. *Wallace*, 142 U. S. 293, explained, and distinguished from this case. *Ankeny* v. *Clark*, 345.

See CONTRACT, 2;
PATENT FOR INVENTION, 11.

CASES QUESTIONED OR OVERRULED.

See COURT MARTIAL, 3,
DEED, 2.

CERTIORARI.

1. Under the act of March 3, 1891, c. 517, § 6, this court has power, in a case made final in the Circuit Court of Appeals, although no question of law has been certified by that court to this, to issue a writ of *certiorari* to review a decree of that court on appeal from an interlocutory order of the Circuit Court; but will not exercise this power, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause. *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway*, 372.

2. This court will issue a writ of *certiorari* to review a decree of the Circuit Court of Appeals, by which, on appeal from an interlocutory order of the Circuit Court, granting an injunction, appointing a receiver of a railway company, and authorizing him to issue receiver's notes, the injunction has not only been modified, but the order has been reversed in other respects. *Ib.*

3. A decree of the Circuit Court of Appeals, by which, on appeal from an interlocutory order of the Circuit Court, vacating an order appointing a receiver, the order appealed from has been reversed, the receivership restored and the case remanded to the Circuit Court to determine who should be receiver, will not be reviewed by this court by writ of *certiorari*, either because no appeal lies from such an interlocutory order, or because the order appointing the receiver was made by a Circuit Judge when outside of his circuit. *Ib.*

4. A Circuit Judge having taken part in a decree of the Circuit Court of Appeals on an appeal from an interlocutory order setting aside a previous order of his in the case, this court granted a rule to show cause why a writ of *certiorari* should not issue to the Circuit Court of Appeals to bring up and quash its decree because he was prohibited by the act of March 3, 1891, c. 517, § 3, from sitting at the hearing. *Ib.*

See CIRCUIT COURTS OF APPEALS, 3,
HABEAS CORPUS.

CHATTEL MORTGAGE.

See LOCAL LAW, 1.

CHEROKEE INDIANS.

See INDIAN, 1 to 5.

CIRCUIT COURTS OF APPEALS.

1. In order to give this court jurisdiction over questions or propositions of law sent up by a Circuit Court of Appeals for decision, it is necessary that the questions or propositions should be clearly and distinctly certified, and should show that the instruction of this court is desired in the particular case as to their proper decision. *Columbus Watch Co.* v. *Robbins*, 266.

2. A statement that one Circuit Court of Appeals has arrived at a different conclusion from another Circuit Court of Appeals on a question or proposition, is not equivalent to the expression of a desire for instruction as to the proper decision of a specific question, requiring determination in the proper disposition of the particular case. *Ib.*
3. The fact that a Circuit Court of Appeals for one Circuit has rendered a different judgment from that of the Circuit Court of Appeals for another Circuit, under the same conditions, may furnish ground for a *certiorari* on proper application. *Ib.*

CIRCUIT COURTS OF THE UNITED STATES.

See CERTIORARI; JURISDICTION, B, MANDAMUS, PRACTICE, 1.

CLAIMS AGAINST THE UNITED STATES.

1. The United States cannot be held liable in the Court of Claims for the amount of registered bonds which the Register of the Treasury cancels without authority of law, not being liable for non-feasances, or misfeasances or negligence of its officers. *German Bank* v. *United States*, 573.
2. The only remedy in such case is by appeal to Congress. *Ib.*

See JURISDICTION, C, LETTER CARRIER.

COLORADO.

See LOCAL LAW, 1, 2.

COLOR OF TITLE.

See PUBLIC LAND, 4.

COMMON CARRIER.

See RAILROAD.

CONFLICT OF LAWS.

See JURISDICTION, B, 5.

CONSPIRACY.

See INDICTMENT.

CONSTITUTIONAL LAW

1. After the adoption of Article 233 of the Constitution of Louisiana, declaring certain designated bonds void, the Treasurer of that State fraudulently put them into circulation, and absconded. Payment having been refused by the State to an innocent holder of such a bond, which he had purchased for value, it is *held*, in a suit by him

to recover back the purchase money, that such refusal by the State raises no federal question. *Bier* v. *McGehee*, 137.

2. In the proceedings taken under the act of August 11, 1888, 25 Stat. pp. 400, 411, c. 860, to condemn lock and dam No. 7 of the Monongahela Navigation Company, that company is entitled, under the provisions of the Fifth Amendment to the Constitution, to recover compensation from the United States for the taking of the franchise to exact tolls, as well as for the value of the tangible property taken. *Monongahela Navigation Co.* v. *United States*, 312.
3. The assertion by Congress of its purpose to take the property which that company had constructed in the Monongahela River by authority of the State of Pennsylvania did not destroy the franchise granted to the company by the State. *Ib.*
4. The authority conferred by the act of the legislature of New York of May 11, 1874, c. 430, p. 547, as amended by the act of June 2, 1876, c. 446, p. 480, upon purchasers at a foreclosure sale of a railroad, to organize a corporation to receive and hold the purchased property, creates no contract with the State, and the imposition, under the provisions of the act of the legislature of New York of April 16, 1886, c. 143, of a tax upon a corporation so organized after the passage of that act by purchasers who purchased at a foreclosure sale made before its passage, for the privilege of becoming a corporation, violates no contract of the State, and is no violation of the Constitution of the United States. *Schurz* v. *Cook*, 397.
5. A fugitive from justice who has been surrendered by one State of the Union to another State, upon requisition charging him with the commission of a specific crime, has, under the Constitution and laws of the United States, no right, privilege or immunity to be exempt from indictment and trial, in the State to which he is returned, for any other or different offence from that designated in the requisition, without first having an opportunity to return to the State from which he was extradited. *Lascelles* v. *Georgia*, 537.
6. The provisions in the legislation of the State of Texas respecting the taxation of persons engaged in the sale of spirituous, vinous or malt liquors, or medicated bitters do not violate the Constitution of the United States. *Giozza* v. *Tiernan*, 657.

See BOUNDARY, 1, 3, 4.

CONTRACT.

1. When one party to a special contract not under seal refuses to perform his side of the contract, or disables himself from performing it by his own act, the other party has thereupon a right to elect to rescind it, and may, on doing so, immediately sue on a *quantum meruit* for anything he had done under it previously to the rescission. *Ankeny* v. *Clark*, 345.

2. This doctrine was supported by the Supreme Court of the Territory of Washington in this case, and is now sustained by this court, notwithstanding the decision of the Supreme Court of the State of Washington in *Distler* v. *Dabney*, 23 N. W Rep. 335, construing the code of that State adversely to it. *Ib.*

3. A title derived from a land grant railroad company which has not received a patent by reason of failure to pay the costs of surveying, is not a title which a party who has contracted for a deed of the land and has paid the purchase price therefor, is obliged to accept. *Ib.*

4. When a contract is entered into to convey and to purchase a tract of land, and title fails as to part of it, the purchaser may rescind the contract as to all. *Ib.*

5. When part of a contract of purchase of land is that the purchaser shall assume and pay a mortgage thereon, if the title to a part of it fails he may rescind the contract without paying the mortgage. *Ib.*

6. When a contract to convey land permits the purchaser to enter and occupy, and he does so and makes the payments prescribed by the contract, and the seller fails to convey by the agreed title, the seller cannot, in an action by the purchaser to recover back the purchase money, set up as an offset a claim for the rent of the land during the buyer's occupancy. *Ib.*

7. A contract being entered into for the sale of extensive ranch privileges and of all the cattle on the ranches except 2000 steers reserved in order to fulfil a previous contract, it is competent, in an action founded upon it, to show that the steers contracted by the previous contract to be sold were to be of the age of two years and upwards, and, that being established, if there were not enough of that age to fulfil the previous contract, the seller could not take animals of other age from the rest of the herd to make up the requisite number. *Lonergan* v. *Buford*, 581.

8. The contract further provided that payment of the larger part of the consideration money was to be made in advance, and that delivery was to be made on the purchaser's making the final payment on a given day. On the day named, having made the previous payment, he made the final one under protest that, inasmuch as the seller declined to make any delivery without receiving the contract price in full, he made it in order to obtain delivery, and with the distinct avowal that it was not due. *Held*, that this was not a voluntary payment, which could not be recovered back in whole or in part. *Ib.*

See CONSTITUTIONAL LAW, 4,
NEGLIGENCE.

CORPORATION.

See EQUITY, 4, 6.

COURT OF CLAIMS.

See CLAIMS AGAINST THE UNITED STATES; JURISDICTION, A, 5; C.

COURT-MARTIAL.

1. The proceedings, findings and sentence of a military court-martial being transmitted to the Secretary of War, that officer wrote upon the record the following order, dating it from the "War Department," and signing it with his name as "Secretary of War" "In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case have been forwarded to the Secretary of War for the action of the President. The proceedings, findings and sentence are approved, and the sentence will be duly executed." *Held*, that this was a sufficient authentication of the judgment of the President; and that there was no ground for treating the order as null and void for want of the requisite approval. *United States* v. *Fletcher*, 84.
2. When a court-martial has jurisdiction, errors in its exercise cannot be reviewed in an action against the United States by the officer court-martialed to recover salary. *Ib.*
3. *Runkle* v. *United States*, 122 U. S. 543. questioned upon the ground that the report of that case shows that the circumstances were so exceptional as to render it hardly a safe precedent in any other. *Ib.*

CUSTOMS DUTIES.

1. Cigarette paper, of suitable size and quality to be used in making cigarettes, and pasteboard covers therefor, of corresponding size, imported separately and entered together with the intention to combine them with paste into cigarette books for the use of smokers, are subject to a duty of seventy per cent *ad valorem* as "smokers' articles" under schedule N, and not to a duty of fifteen per cent *ad valorem* as "manufactures of paper" under schedule M, of the Tariff Act of March 3, 1883, c. 121. *Isaacs* v. *Jonas*, 648.
2. Cigarette paper, made of a quality, and cut into a size, fit for wrapping cigarettes, and which, in the condition and form in which it is imported, can be used by smokers in making their own cigarettes, is subject to the duty of seventy per cent *ad valorem*, imposed on "smokers' articles" by schedule N of the Tariff Act of March 3, 1883, c. 121, and not to the duty of fifteen per cent *ad valorem* imposed on "manufactures of paper" by schedule M of the same act. *United States* v. *Isaacs*, 654.

See JURISDICTION, B, 1.

DEED.

1. The receipt of a quit claim deed does not of itself prevent a party from becoming a *bona fide* holder; and the doctrine expressed in many cases

that the grantee in such a deed cannot be treated as a *bona fide* purchaser does not rest upon any sound principle. *Moelle* v. *Sherwood*, 21.

2. A person holding under a quit claim deed may be a *bona fide* purchaser. *Oliver* v. *Piatt*, 3 How. 333, *Van Rensselaer* v. *Kearney*, 11 How. 297, *May* v. *Le Claire*, 11 Wall. 217, *Villa* v. *Rodriguez*, 12 Wall. 323, *Dickerson* v. *Colgrove*, 100 U. S. 578; *Baker* v. *Humphrey*, 101 U. S. 494; and *Hanrick* v. *Patrick*, 119 U. S. 156, questioned on this point. *United States* v. *California and Oregon Land Co.*, 31.
3. A deed by which the grantor aliens, releases, grants, bargains, sells and conveys the granted estate to the grantee, his heirs and assigns, to have and to hold the same and all the right, title and interest of the grantor therein, is a deed of bargain and sale, and will convey an after-acquired title. *Ib.*

See CONTRACT, 3,
EQUITY, 4,
LOCAL LAW, 4, 5.

DEMURRER.

1. An answer to a declaration on such bonds and coupons setting out the statutory provisions under which the bonds were issued and averring that the election under which they were claimed to have been authorized was not a free and fair election but was a sham "as shown by papers filed with the county clerk," and reciting various irregularities which were alleged to appear "by reference to certified copies of the papers sent into the clerk's office" from some of the various precincts of the county, and concluding "and so the county says that there was in fact no election held in said county on February 27, 1872, to determine whether or not the county would subscribe to the capital of said railroad company and issue bonds to pay the same" presents no issuable question of fact, going to the merits of the suit, and if demurred to, the demurrer should be sustained. *Chicot County* v. *Sherwood*, 529.
2. While matters of fact, well pleaded, are admitted by a demurrer, conclusions of law are not so admitted. *Ib.*

DEPOSIT.

See BANK;
INTERNAL REVENUE, 1.

DISTRICT OF COLUMBIA.

See HABEAS CORPUS,
JUDGMENT, 1.

DURESS.

See CONTRACT, 8.

EQUITY.

1. A defendant in equity may let the facts averred in the bill go unchallenged, and set up some special matter by plea sufficient to defeat the recovery; and in such case no fact is in issue at the hearing but the matter so specially pleaded. *United States* v *California & Oregon Land Co.*, 31.
2. In these suits those defendants who were not the original wrongdoers had the right to set up any special matter of defence which constituted a defence as to them, and then the inquiry was limited to such matter as between them and the government. *Ib.*
3. The essential elements which go to make a *bona fide* purchaser of real estate are: (1) a valuable consideration, (2) an absence of notice of fraud or defect; (3) presence of good faith. *Ib.*
4. The plaintiff below contracted to buy of defendant and the defendant agreed to sell to plaintiff, for a valuable consideration, several pieces or parcels of land. In pursuance of said contract, a deed was made by the defendant to the plaintiff, wherein and whereby, by mistake and inadvertence in describing the property conveyed, there was omitted therefrom an important part of the property contracted to be sold. The purchase price was a round sum for all the tracts, and was paid. *Held*, that a case for a reformation of the deed was clearly made out, unless the defendant should be able to show some good reason why such admitted or established facts are not entitled to their apparent weight. *Wasatch Mining Co.* v. *Crescent Mining Co.*, 293.
5. In equitable remedies given for fraud, accident or mistake, it is the facts as found that give the right to relief, and, as it is often difficult to say, upon admitted facts, whether the error which is complained of was occasioned by intentional fraud or by mere inadvertence or mistake, the appellant in this case has no reason to complain of the language of the court below, in attributing his misconduct to mistake or inadvertence rather than to intentional fraud, and he cannot raise such an objection for the first time in this court. *Ib.*
6. A party having a claim for unliquidated damages against a corporation which has not been dissolved, but has merely distributed its corporate funds amongst its stockholders and ceased or suspended business, cannot maintain a suit on the equity side of the United States Circuit Court against a portion of such stockholders, to reach and subject the assets so received by them to the payment and satisfaction of his claim, without first reducing such claim to judgment, and without making the corporation a defendant and bringing it before the court. *Swan Land & Cattle Co.* v. *Frank*, 603.
7. Corporations are indispensable parties to a bill which affects corporate rights or liabilities. *Ib.*
8. A claim purely legal, involving a trial at law before a jury, cannot,

until reduced to judgment at law, be made the basis of relief in equity. *Ib.*

9. The general practice in this country and in England when a bill in equity is dismissed without a consideration of the merits for the court to express in its decree that the dismissal is without prejudice. *Ib.*

ESTOPPEL.

See TELEGRAPH COMPANY, 3.

EVIDENCE.

See LOCAL LAW, 5, 6,
TAX AND TAXATION, 2.

EXCEPTION.

See JUDGMENT, 1.

EXECUTIVE.

It is again decided that when a statute of the United States delegates to a tribunal or officer full jurisdiction over a subject in which the United States are interested, his or its determination within the limit of his authority is conclusive, in the absence of fraud. *United States* v. *California & Oregon Land Co.*, 31.

EXTRADITION.

See CONSTITUTIONAL LAW, 5.

FINDING OF FACTS.

1. When the record shows that the case was tried below by the court without a jury, and there is no special finding of facts, and no agreed statement of facts, but only a general finding, this court must accept that finding as conclusive, and limit its inquiry to the sufficiency of the complaint and of the rulings, if any be preserved, on questions of law arising during the trial. *Lehnen* v. *Dickson*, 71.
2. No mere recital of the testimony, whether in the opinion of the court or in a bill of exceptions, can be deemed a special finding of facts within the scope of the statute. *Ib.*

See JURISDICTION, A, 1.

FRAUD.

See EQUITY, 5.

HABEAS CORPUS.

Leave to file petitions for writs of *habeas corpus* and *certiorari* to the Supreme Court of the District of Columbia or the officers of the

District acting under a judgment of that court will be denied, when the ground of the application relates to an error in the proceedings of that court, and does not go to its jurisdiction or authority. *In re Schneider* (No. 2), 162.

See JURISDICTION, A, 4,
MANDAMUS, 2.

INDIAN.

1. Congress has not authorized the courts in this litigation to go behind the treaty of August 6, 1846, 9 Stat. 871, with the Cherokee Nation. *United States* v. *Old Settlers*, 427.
2. So far as there is a conflict between the treaties with the Cherokees and subsequent acts of Congress, the latter must prevail. *Ib.*
3. The contention made by the Western Cherokees as to the ownership of land to the west of the Mississippi was put to rest by the treaty of 1846, and cannot now be revived. *Ib.*
4. The rule that, when a party without force or intimidation and with a full knowledge of all the facts in the case, accepts on account of an unliquidated and uncontroverted demand a sum less than what he claims and believes to be due him, and agrees to accept that sum in full satisfaction, he will not be permitted to avoid his act on the ground of duress, does not apply in this case, as it is evident that Congress was convinced that a mistake had been made, and intended to afford an opportunity to have it corrected. *Ib.*
5. On examining the account between the United States and the Western Cherokees, this court finds some small errors in the statement of it as made by the Court of Claims, and, after correcting those errors, it agrees with the Court of Claims that interest should be allowed on all but a small part of it, and orders the judgment, as thus corrected, to be affirmed. *Ib.*
6. The decision of the Court of Claims respecting the amount of money to be awarded to the Indians in these cases is affirmed, and it is further suggested, as to the distribution of that amount among the several claimants that it is a question of law, to be settled by the court; but as the facts are not presented in an authoritative form, this court acquiesces in the suggestion of the court below that it be dealt with by the authorities of the government. *Phineas Pam-to-pee* v *United States*, 691.

INDIANA.

The State of Indiana is not entitled, under the act of April 19, 1816, c. 57, and the act of March 3, 1857, c. 104, to be paid by the United States the two per cent of the net proceeds of sales by Congress of lands within the State, which the United States agreed by the former act to apply "to the making of a road or roads leading to the said State,"

and have actually applied to the making of the Cumberland road. *Indiana* v. *United States*, 148.

INDICTMENT.

1. In a prosecution for conspiracy, corruptly and by threats and force to obstruct the due administration of justice in a Circuit Court of the United States, the combination of minds for the unlawful purpose and the overt act in effectuation of that purpose must appear charged in the indictment. *Pettibone* v. *United States*, 197.
2. A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means. *Ib.*
3. When the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment; while if the criminality of the offence consists in the agreement to accomplish a purpose not in itself criminal or unlawful, by criminal or unlawful means, the means must be set out. *Ib.*
4. An indictment against a person for corruptly or by threats or force endeavoring to influence, intimidate or impede a witness or officer in a court of the United States in the discharge of his duty, must charge knowledge or notice, or set out facts that show knowledge or notice, on the part of the accused that the witness or officer was such. *Ib.*
5. A person is not sufficiently charged in such case with obstructing or impeding the due administration of justice in a court, unless it appear that he knew or had notice that justice was being administered in such court. *Ib.*

INTEREST.

See INDIAN, 5.

INTERNAL REVENUE.

1. Under § 110 of the act of June 30, 1864, c. 173, 13 Stat. 277, afterwards embodied in § 3408 of the Revised Statutes, imposing a tax of $\frac{1}{24}$ of 1 per cent each month "upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company or corporation, engaged in the business of banking," moneys deposited by the treasurer of the State of New York, in the bank of the Manhattan Company, in the city of New York, intended to satisfy the interest or principal of stocks of that State, and credited to said treasurer, and then drawn for by him by drafts payable to the order of the cashier of the bank, and then paid out by the bank for such interest or principal, are subject to such tax. *Manhattan Co.* v. *Blake*, 412.

2. The bank received a salary from the State for rendering such services, and did not charge any of the tax to the State. *Ib.*
3. Such tax was not a tax on the revenues of the State in the hands of a disbursing agent. *Ib.*
4. Nor was the trust created in favor of each creditor of the State in the hands of the bank, as to the deposit. *Ib.*

JUDGMENT.

1. When the parties to a suit tried in the Supreme Court of the District of Columbia, at circuit, cannot agree as to the exceptions, the trial term may, under the rules, be extended into succeeding terms for the purpose of settling them, and in case the judge presiding at the trial dies without settling them, and in consequence thereof a motion be made to set aside the verdict and order a new trial, the then presiding judge in the Circuit Court may order the motion to be heard in General Term, and an order to set aside the verdict and direct a new trial made in General Term is not a final judgment from which an appeal may be taken to this court. *Hume* v. *Bowie*, 245.
2. An order overruling a motion to remand a case to a state court is not a final judgment. *Bender* v. *Pennsylvania Co.*, 502.

See MANDAMUS, 3, 4, 5, 6.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. In this case it appears by the bill of exceptions that there was an application at the close of the trial for an instruction that the plaintiff was entitled to judgment for the sum claimed, which was refused and exception taken, and this is *held* to present a question of law for the consideration of this court, although there were no special findings of fact. *St. Louis* v. *Western Union Tel. Co.*, 92.
2. When the trial court, in a case where some facts are agreed and there is oral testimony as to others, makes a ruling of law upon a point not affected by the oral testimony, this court may consider it notwithstanding the fact that there was only a general finding of facts. *Ib.*
3. After the adoption of Article 233 of the constitution of Louisiana, declaring certain designated state bonds void, the Treasurer of that State fraudulently put them into circulation, and absconded. Payment having been refused by the State to an innocent holder of such a bond, which he had purchased for value: *Held*, in a suit brought by him to recover back the purchase money, that such refusal by the State raised no federal question. *Bier* v. *McGehee*, 137.
4. A writ of error from this court does not lie to a judgment of the Supreme Court of the District of Columbia, dismissing the petition of a convict for a writ of *habeas corpus*. *In re Schneider, Petitioner*, (No. 1,) 157.

5. No appeal from findings of fact and of law and the decision of the Court of Claims thereon made upon a claim transmitted to it by the head of a Department with the consent of the claimant, and reported to that Department by the court under the provisions of the act of March 3, 1887, 24 Stat. 505, c. 359, lies to this court on the part of the claimant. *In re Sanborn*, 222.

6. When a manifestly defective petition for the removal of a cause from a state court to a federal court is filed in the trial court of the State, and that court denies it, and proceeds to trial and judgment on the merits, and the cause is taken in error to an appellate court of the State, where the judgment below is affirmed, no federal question arises. *Pennsylvania Co.* v. *Bender*, 255.

7. A bill pending in a Circuit Court of the United States against a foreign corporation and other defendants, citizens of the United States, for the infringement of letters patent, was dismissed as to the foreign corporation, and, so far as appeared from the record in the appeal from the judgment of dismissal, was still pending and undetermined as to the codefendants. *Held*, that the decree in favor of the corporation was not a final decree from which an appeal could be taken to this court, and that this appeal must be dismissed for want of jurisdiction. *Hohorst* v. *Hamburg-American Packet Co.*, 262.

8. The appeal in this case from a decree of the Circuit Court in a suit against the United States brought under the act of March 3, 1887, 24 Stat. 505, c. 359, not having been taken before July 1, 1892, is dismissed. *Ogden* v. *United States*, 390.

9. Findings of facts by the Court of Claims, in a suit which Congress has authorized it to take jurisdiction of in equity, may be reviewed by this court. *United States* v. *Old Settlers*, 427

10. A federal question, suggested for the first time in a petition for a rehearing, after judgment in the highest court of a State, is not properly raised so as to authorize this court to review the decision of that court. *Bushnell* v *Crooke Mining and Smelting Co.*, 682.

11. The decision in the state court in this case clearly presented no federal question, as no right, immunity or authority under the Constitution or laws of the United States was set up by the plaintiffs in error, or denied by the Supreme Court of the State, nor did the judgment of the latter court necessarily involve any such question, or the denial of any such right. *Ib.*

See CERTIORARI;
CIRCUIT COURTS OF APPEALS,
FINDING OF FACTS, 1,
HABEAS CORPUS,
JUDGMENT, 2;
MANDAMUS, 7,
PRACTICE, 2.

B. OF CIRCUIT COURTS OF THE UNITED STATES.

1. The act of June 10, 1890, "to simplify the laws in relation to the collection of the revenue," 26 Stat. 131, c. 407, confers no jurisdiction upon

Circuit Courts of the United States, on the application of dissatisfied importers to review and reverse a decision of a board of general appraisers, ascertaining and fixing the dutiable value of imported goods, when such board has acted in pursuance of law, and without fraud or other misconduct from which bad faith could be implied. *Passavant* v. *United States*, 214.

2. A complaint which avers that the plaintiff was, at the several times named therein, "and ever since has been and still is a resident of the city, county and State of New York," is not sufficient to give the Circuit Court of that Circuit jurisdiction on the ground of citizenship of the parties, when the record nowhere discloses the plaintiff's citizenship. *Wolfe* v. *Hartford Life Ins. Co.*, 389.
3. Following *Walter* v *Northeastern Railroad Company*, 147 U. S. 370, it is again held that a Circuit Court of the United States has no jurisdiction over a bill in equity to enjoin the collection of taxes from a railroad company, when distinct assessments, in separate counties, no one of which amounts to $2000, and for which, in case of payment under protest, separate suits must be brought to recover back the amounts paid, are joined in the bill and make an aggregate of over $2000. *Northern Pacific Railroad* v. *Walker*, 391.
4. As, perhaps, by amendment this bill might be retained as to some one of the defendants, this court declines to dismiss the bill, and reverses the judgment and remands the cause to the court below for further proceedings in conformity with this opinion. *Ib.*
5. An action will lie in a Circuit Court of the United States in the State of Arkansas at the suit of a citizen of New York, against a county in Arkansas, to recover on bonds and coupons issued by the county to aid in the construction of a railroad and held by the citizen of New York, notwithstanding the provisions in the act of the Legislature of Arkansas of February 27, 1879, repealing all laws authorizing counties within the State to be sued, requiring all demands against them to be presented to the County Courts of the several counties for allowance or rejection, and allowing appeals to be prosecuted from the decisions of those courts. *Chicot County* v. *Sherwood*, 529.

See CIRCUIT COURTS OF APPEALS;
MANDAMUS, 3, 4, 5, 6,
PUBLIC LAND, 1.

C. JURISDICTION OF THE COURT OF CLAIMS.

The owner of a well, on land near to but not on the line of the Washington aqueduct, which was destroyed in the construction of that work, may recover its value from the United States in the Court of Claims under the provisions of the act of July 15, 1882, 22 Stat. 168, c. 294. *United States* v. *Alexander*, 186.

LACHES.

1. The mere institution of a suit does not of itself relieve a person from the charge of laches, and if he fail in its diligent prosecution, the consequences are the same as though no action had been begun. *Johnston* v. *Standard Mining Co.*, 360.
2. Where a question of laches is in issue the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known to him were such as to put the duty of inquiry upon a man of ordinary intelligence. *Ib.*
3. The duty of inquiry is all the more peremptory when the thing in dispute is mining property, which is of an uncertain character, and is liable to suddenly develop an enormous increase in value. *Ib.*
4. In this case it is clear that the plaintiff did not make use of that diligence which the circumstances of the case called for. *Ib.*

LANDLORD AND TENANT.

See CONTRACT, 6.

LETTER-CARRIER.

1. Under the act of May 24, 1888, c. 308 (25 Stat. 157), which provides "that hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith, for which they shall receive the same pay as is now paid as for a day's work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same in proportion to the salary now fixed by law," reference is not had only to letter-carrier service, and a claimant is not required to show not only that he has performed more than eight hours of service in a day, but also that such eight hours of service related exclusively to the free distribution and collection of mail matter, and that the extra service for which he claims compensation was of the same character. *United States* v. *Post*, 124.
2. Under § 647 of the Regulations of the Post-office Department, of 1887, and the act of 1888, a claim for extra service and pay may include an employment of the letter-carrier not only in the delivery and collection of mail matter, but also in the post-office, during the intervals between his trips, in such manner as the postmaster directs, but not as a clerk. *Ib.*
3. Such extra service is not an extra service within the meaning of §§ 1764 and 1765 of the Revised Statutes, payment for which is not authorized by law. *Ib.*
4. Under the act of May 24, 1888, c. 308, (25 Stat. 157,) providing for extra pay to letter-carriers in cities or postal districts connected therewith, who are employed a greater number of hours per day than eight,

a letter-carrier whose salary is $1000 a year, and who is employed, in a period of a little more than two months, 165 hours and 9 minutes more than eight hours a day, is not required to deduct therefrom the deficit of less than eight hours a day worked by him on Sundays and holidays. *United States* v. *Gates*, 134.

LICENSE TAX.

See TELEGRAPH COMPANY, 1.

LOCAL LAW

1. A chattel mortgage of the stock of goods in a store in Colorado, given to secure the mortgagees for their liability as endorsers of notes of the mortgagor, is held to be a chattel mortgage, and not a general assignment for the benefit of creditors. *May* v *Tenney*, 60.
2. In Colorado, a general transfer of property by a debtor for the benefit of a preferred creditor, does not, if found to be in violation of the policy of the State as expressed in its legislation, become a general assignment for the benefit of all creditors, without preferences, but is entirely void. *Ib.*
3. In Missouri, in an action of unlawful detainer, the defendant put in evidence a lease of the property by the then owner, who had since died, which had been assigned to him. The plaintiff offered evidence of a judgment cancelling and setting aside that lease, which was admitted under objection, and the admission excepted to. *Held*, that the ruling was right. *Lehnen* v. *Dickson*, 71.
4. In Texas, a married woman, who owns land in her own right, cannot convey it to her husband, as her attorney, under a power of attorney from her to him, without herself signing and acknowledging privily the deed, although her husband joins in the deed individually. *Mexia* v. *Oliver* 664.
5. Where a suit is brought in Texas by a married woman and her husband, to recover possession of land, her separate property, and the petition is endorsed with a notice that the action is brought as well to try title as for damages, it is error to admit in evidence against the plaintiffs such a power of attorney and deed, although there is an issue as to boundary and acquiescence and ratification. *Ib.*
6. It does not appear beyond a doubt that such error could not prejudice the rights of the plaintiffs. *Ib.*

District of Columbia. *See* JUDGMENT, 1.
Kansas. *See* MUNICIPAL BOND, 3, 4, 6, 9.
Mississippi. *See* MUNICIPAL BOND, 1.
Oregon. *See* TAX AND TAXATION, 4, 5.
Washington. *See* CONTRACT, 2.

LONGEVITY PAY.

See OFFICERS OF THE NAVY, 2.

MANDAMUS.

1. Mandamus lies in behalf of a State to compel the remanding to one of its courts of a criminal prosecution there commenced, and of which the Circuit Court of the United States has assumed jurisdiction, at the defendant's suggestion, without due proceedings for removal. *Virginia* v *Paul*, 107.
2. Mandamus does not lie to review an order on a writ of *habeas corpus*, under sections 751–753 of the Revised Statutes, discharging a prisoner from commitment under authority of a State, on the ground of his being in custody for an act done in pursuance of a law of the United States. *Ib.*
3. This court, in *Goode* v *Gaines*, (145 U. S. 141,) on an appeal by the defendant in a suit in equity, from a decree of the Circuit Court of the United States for the Eastern District of Arkansas, reversed the decree, and ordered that each party pay one-half of the costs in this court, and the mandate recited the decree of this court, and remanded the cause "for further proceedings to be had therein in conformity with the opinion of this court," and commanded that such further proceedings be had in the cause, "in conformity with the opinion and decree of this court, as, according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding." The Circuit Court had decreed that the title of the defendant to a lot of land be divested out of him, and be vested in the plaintiffs, and that a master take an account of rents on the lot, taxes paid and improvements placed on it. This court held that no error was committed in any matter relating to the title or possession of the land, but that error was committed, in acting on the report of the master, in allowing the plaintiffs for rents which accrued before the filing of the bill. On the presentation of the mandate to the Circuit Court, with a proposed decree thereon, the defendant filed exceptions, and the Circuit Court entered an order allowing the defendant to take further testimony in support of his exceptions, "by way of defence to the title to the land in controversy," and set the cause down upon the issues formed by the pleadings and exceptions as to the title to the land, and sustained the exceptions, and overruled a petition of the plaintiffs for a writ of possession. This court awarded a mandamus for the entry of the proposed decree, and for a writ of possession. *Gaines* v *Rugg*, 228.
4. This court had not disturbed the findings and decree of the Circuit Court in regard to the title and possession, but only its disposition of the matter of accounting. *Ib.*
5. The mandate and the opinion, taken together, although they used the word "reversed," amounted to a reversal only in respect to the accounting, and to a modification of the decree in respect of the accounting, and to an affirmance of it in all other respects. *Ib.*

6. The construction of the intent and meaning of the opinion of this court was not a matter for the exercise of judicial discretion by the Circuit Court, and the case is a proper one for a mandamus by this court. *Ib.*

7. A writ of mandamus does not lie to the United States Circuit Court of Appeals to review, or to the Circuit Court of the United States to disregard, a decree of the Circuit Court of Appeals, made on appeal from an interlocutory order of the Circuit Court, and alleged to be in excess of its powers on such an appeal, but which might be made on appeal from the final decree, when rendered. *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway*, 372.

MARRIED WOMEN.

See LOCAL LAW, 4, 5.

MASTER AND SERVANT.

See NEGLIGENCE.

MEXICAN GRANT.

See PUBLIC LAND, 5.

MISTAKE.

See EQUITY, 5.

MORTGAGE.

See CONTRACT, 5.

MUNICIPAL BOND.

1. Town bonds having more than ten years to run, issued by a town in Mississippi under the act of March 25, 1871, of the legislature of Mississippi, to aid in the construction of the Grenada, Houston and Eastern Railroad are void. *Barnum* v. *Okolona*, 393.

2. That municipal corporations have no power to issue bonds in aid of a railroad except by legislative permission, that the legislature, in granting permission to a municipality to issue its bonds in aid of a railroad, may impose such conditions as it may choose; and that such legislative permission does not carry with it authority to execute negotiable bonds except subject to the restrictions and conditions of the enabling act, are propositions well settled by frequent decisions of this court. *Ib.*

3. The bonds issued by the city of Atchison, Kansas, January 1, 1869, pledging the school fund, etc., of the city for payment were valid obligations. *Atchison Board of Education* v. *De Kay*, 591.

4. The legislation of Kansas relating to cities of the first class, and to cities of the second class, and to Boards of Education, reviewed. *Ib.*
5. An error of a single word in the title of a statute in copying it into a municipal bond does not vitiate the deliberate acts of the proper officers of the municipality, as expressed in the promise to pay which they have issued for money borrowed. *Ib.*
6. It is a general rule that, where a municipal charter commits the decision of a matter to the council of a municipality, and is silent as to the mode of decision, it may be done by a resolution, and need not necessarily be by an ordinance; and the decision in *Newman* v. *Emporia*, 32 Kansas, 456, is not in conflict with this rule. *Ib.*
7. When municipal bonds have been issued in reliance upon a consent of the proper municipal authorities, as shown by the municipal records and for years thereafter, interest had been duly paid upon such bonds, the courts will not, after the lapse of twenty years, in a suit upon the bonds, pronounce them invalid on purely technical and trivial grounds. *Ib.*
8. An express power conferred upon a municipal corporation to issue bonds bearing interest, carries with it the power to attach interest coupons to those bonds. *Ib.*
9. This action is properly brought against the Board of Education of the city of Atchison, which is a distinct corporation, and the proper one to be sued for a debt like this. *Ib.*

MUNICIPAL CORPORATION.

See TELEGRAPH COMPANY, 1, 2, 3.

NATIONAL BANK.

See INTERNAL REVENUE, 1.

NAVY.

See OFFICERS OF THE NAVY.

NEGLIGENCE.

A contractor agreed with a railroad company to construct piers for a bridge over the Ohio River of sizes and forms, in places, and of materials, in accordance with plans and specifications furnished by the company, and to furnish the materials and perform the work of preparing and keeping in place, buoys and lights to warn against danger. By reason of a flood one of these piers was submerged, and the buoy and light placed to give warning of it were carried away. The contractors failed to place a new buoy and light. One of the barges in a tow struck on the pier and was lost. In an action against the contractor to recover damages therefor: *Held*,

(1) That the defendants were independent contractors, and not em-

ployés of the company, and as such were liable for injuries caused by their own negligence;

(2) That having omitted to replace the buoy, although they knew of the necessity therefor and had ample time to do so, or otherwise to warn of the danger, they were guilty of negligence, and responsible for injuries resulting therefrom,

(3) That there was no contributory negligence on the part of those navigating the vessel destroyed, as it would be placing too severe a condemnation on the conduct of the pilots in charge to hold that an error of judgment, a dependence upon the appearance of the stream, and a reliance upon the duty of the contractors to place suitable buoys and other warnings, were such contributory negligence as would relieve the contractors from liability. *Casement* v. *Brown*, 615.

NEW TRIAL.

See JUDGMENT, 1.

OFFICERS OF THE NAVY.

1. The pay of a retired officer of the Navy is fixed by statute at a certain percentage of the active service pay of the grade held by him at the time of his retirement, and there is nothing in the act of March 3, 1883, 22 Stats. 472, c. 97, to modify this rule. *Roget* v. *United States*, 167.
2. An officer of the Navy who was retired in the first five years of service from a rank having longevity pay, but who was continued on active duty until he had passed into his second five years of service, is not entitled, under the act of March 3, 1883, to a greater rate of pay after active service ceased than seventy-five per centum of the pay of the grade or rank which he held at the time of retirement. *Ib.*

OKLAHOMA.

See PUBLIC LAND, 6.

PATENT FOR INVENTION.

1. Letters patent No. 260,232, granted June 27, 1882, to Henry Huber, as assignee of Stewart Peters and William Donald, of Glasgow, Scotland, for an "improvement in water-closets," the patent expressing on its face that it was "subject to the limitation prescribed by § 4887, Rev. Stat., by reason of English patent dated April 7, 1874, No. 1207," are void because the English patent had expired April 7, 1881. *Huber* v *Wilson Manufacturing Co.*, 270.
2. Reissued letters patent No. 10,826, granted to James E. Boyle, April 19, 1887, for an improvement in flushing apparatus for water-closets, on the reissue of original patent No. 291,139, granted to Boyle, January 1, 1884, the application for the reissue having been filed January 2, 1885, are void, as to claims 1 and 2 of the reissue. *Ib.*

3. Every claim of the original patent contained, as an element, a flushing chamber, and no claim of the reissue which leaves out a flushing chamber can be construed as valid. *Ib.*
4. There is new matter in the reissue specification inserted to lay a foundation for the expanded claims in the reissue. *Ib.*
5. There is nothing in the original patent which suggests the possibility that Boyle's invention could be operated by a combination which omitted the flushing chamber as an element thereof. *Ib.*
6. The fifth claim in letters patent No. 220,889, issued to Edmund B. Taylor, October 21, 1879, for improvements in machines for pouncing hats, viz.. "5. The combination of the support for the hat and the self-feeding pouncing cylinder, whereby the hat is drawn over the support B in the direction of the motion of the pouncing cylinder," was anticipated by the second claim in letters patent No. 97,178, issued November 23, 1869, to Rudolph Eickemeyer. *National Hat Pouncing Machine Co.* v. *Hedden*, 482.
7. Letters patent No. 267,192, issued November 7, 1882, to James M. Grant for "certain new and useful improvements in the art of reeling and winding silk and other thread" are void for want of patentable novelty, the alleged discovery being only that of a new use for the old device of a cross-reeled and laced skein, and while the fact that the patented article has gone into general use may be evidence of its utility, it cannot control the language of the statute, which limits the benefit of the patent laws to things which are new, as well as useful. *Grant* v. *Walter*, 547
8. Features in a patented invention which are not covered by the claims are not protected by the letters patent. *Ib.*
9. Letters patent No. 298,303, issued May 6, 1884, to George Krementz for a new and improved collar button protect a patentable invention, which was not anticipated by the invention described in letters patent No. 171,882, issued to Robert Stokes, January 4, 1876, nor by the invention described in letters patent No. 177,253, issued May 9, 1876, to John Keats. *Krementz* v. *Cottle Co.*, 556.
10. When the other facts in the case leave the question of invention in doubt, the fact that the device has gone into general use, and has displaced other devices which had previously been employed for analogous uses, is sufficient to turn the scale in favor of invention. *Ib.*
11. Where a new and original shape or configuration of an article of manufacture is claimed in a patent issued under Rev. Stat. § 4929, its utility is an element for consideration in determining the validity of the patent. *Gorham Manufacturing Co.* v. *White*, 14 Wall. 511, distinguished. *Smith* v. *Whitman Saddle Co.*, 674.
12. The test of identity of design in the invention covered by such a patent is the sameness of appearance to the eye of an ordinary observer. *Ib.*
13. The saddle, the design for which is protected by letters patent No.

10,844, issued September 24, 1878, to Royal E. Whitman for an improved design for saddles, was made by taking the front half of a saddle previously known as the Granger tree, and the rear half of a saddle known as the Jenifer or Jenifer-McClellan Saddle, changing the Granger tree part so as to leave a perpendicular drop of some inches at the rear of the pommel. *Ib.*

14. In view of this previous condition of the art, the new and material thing protected by those letters patent was the sharp drop of the pommel at the rear, and they were not infringed by the saddles constructed by the plaintiffs in error. *Ib.*

PAYMENT.

See CONTRACT, 8.

PLEADING.

See DEMURRER.

POTTAWATOMIE INDIANS.

See INDIAN, 6.

PRACTICE.

1. Where no appeal lies from a decree of a Circuit Court to this court, the Circuit Court may, under the 88th rule in equity, allow a petition for a rehearing, and may rehear the cause after the adjournment of the court for the term in which the original decree was rendered. *Moelle* v. *Sherwood*, 21.
2. After such a petition is filed, and a hearing had on it in the court below, it is too late to file affidavits and to claim that the amount in controversy exceeded the jurisdictional sum, so that an appeal could have been taken. *Ib.*
3. The former decision in this case, 140 U. S. 599, imported that the pleas were sufficient in law, and remanded the case only for an inquiry as to their truthfulness. *United States* v. *California & Oregon Land Co.*, 31.
4. When this case was reached it was dismissed under rule 10 because the record was not printed, but, upon a representation that the parties had stipulated under rule 32 that it should not be printed, the court vacated the order and permitted the case to be restored to the docket on payment of costs and printing the record. *Rosenthal* v. *Coates*, 142.
5. When, in the trial of a case, no objection is made to the admission of evidence and its relevancy to the pleadings, it is too late to raise those questions in this court. *Wasatch Mining Co.* v. *Crescent Mining Co.*, 293.
6. Judgments of territorial courts in mere matters of procedure are not

subject to reversal because of decisions made in subsequent cases by the courts of the State, after its admission, while the former cases were pending on appeal in this court. *Ankeny* v. *Clark*, 345.

7. Defects in the pleadings in this case, if any, not having been questioned below, cannot operate here to invalidate the trial there. *Ib.*

See EQUITY, 4, 5, 9; FINDING OF FACTS; JUDGMENT, 1, JURISDICTION, A, 1, 2; LOCAL LAW, 3, MANDAMUS, 3, 4, 5, 6.

PRINCIPAL AND AGENT.

See BANK.

PUBLIC LAND.

1. By the acts of July 22, 1854, c. 103, § 8, and July 15, 1870, c. 292, a private claim to land in Arizona under a Mexican grant, which has been reported to Congress by the surveyor general of the Territory, cannot, before Congress has acted on his report, be contested in the courts of justice. *Astiazaran* v. *Santa Rita Land & Mining Co.*, 80.

2. A suit under the act of February 25, 1885, 23 Stat. 321, c. 149, to prevent the unlawful occupancy of public lands, is a summary proceeding in the nature of a suit in equity, which may be tried by the court without the intervention of a jury, and is not governed by Rev. Stat. § 649. *Cameron* v. *United States*, 301.

3. The provisions of the said act of 1885 do not operate upon persons who have taken possession of land under a *bona fide* claim or color of title. *Ib.*

4. Color of title exists wherever there is a reasonable doubt regarding the validity of an apparent title, whether such doubt arises from the circumstances under which the land is held, the identity of the land conveyed, or the construction of the instrument under which the party in possession claims title. *Ib.*

5. On the facts in this case, as detailed in the opinion of the court. *Held*, (1) That the lands in question were not public lands of the United States, within the meaning of that term as used in the acts of Congress respecting the disposition of public lands, (2) That the defendant held them under claim or color of title, under an *expediente* of the Mexican government; (3) That in thus holding the court intimates no opinion as to the validity of the defendant's title. *Ib.*

6. An employé of the Atchison, Topeka and Santa Fé Railroad, residing within the Territory of Oklahoma before, up to and on the 22d day of April, 1889, was thereby disabled from making a homestead entry upon the tract of land on which he was residing. *Smith* v. *Townsend*, 490.

7. The right conferred by the act of July 1, 1862, 12 Stat. 489, c. 120, as subsequently amended, upon the corporation afterwards known as the Union Pacific Railway Company, Eastern Division, to construct its

road substantially in a direct line to Denver, and from thence northerly, to connect with the Union Pacific Railroad at Cheyenne, and to acquire a grant of public lands thereby upon each side of its railroad as constructed, was not affected by the act of March 3, 1869, 15 Stat. 324, c. 127, in such a way as to make the Union Pacific, Eastern Division, terminate at Denver, and to cause its land grants to terminate there, but, on the contrary, the act of 1862, being a grant *in præsenti*, the Company's right to lands upon each side of its road became fixed from the moment it proceeded, under the act of 1866, to establish its line of definite location so as to make the same extend from Kansas City westwardly to Denver, and thence northwardly to Cheyenne, and the act of 1869 is not to be construed as breaking the continuity of the line. *United States* v. *Union Pacific Railway*, 562.

See CONTRACT, 3,

INDIANA.

QUITCLAIM DEED.

See DEED.

RAILROAD.

1. A travelling salesman for a jewelry firm bought a passenger ticket for passage on a railroad, and presented a trunk to be checked to the place of his destination, without informing the agent of the company that the trunk contained jewelry, which it did, and without being inquired of by the agent as to what it contained. He paid a charge for overweight as personal baggage, and the trunk was checked. It was of a dark color, iron bound, and of the kind known as a jeweller's trunk. It had been a practice for jewelry merchants to send out agents with trunks filled with goods, the trunks being of similar character to the one in question, and, as a rule, they were checked as personal baggage. But there was no evidence tending to show that the railroad companies, or their agents, knew what the trunks contained. *Held*, (1) There was no evidence showing, or tending to show, that the agent of the railroad had any actual knowledge of the contents of the trunk, (2) There was no evidence from which it could fairly be said that the agent had reason to believe that the trunk contained jewelry; (3) The agent was not required to inquire as to the contents of the trunk, so presented as personal baggage, (4) The company was not liable for the loss of the contents of the trunk. *Humphreys* v. *Perry*, 627.
2. The cases on the subject, reviewed. *Ib.*

See CONTRACT, 3.

REMOVAL OF CAUSES.

1. Under § 643 of the Revised Statutes, the jurisdiction of the state court is not taken away until a petition for removal is filed in the

Circuit Court of the United States, and a writ of *certiorari* or of *habeas corpus cum causa*, issued by the clerk of that court, and served upon the state court or its clerk. *Virginia* v. *Paul*, 107.

2. A prosecution of a crime against the laws of a State, which must be prosecuted by indictment, is not commenced, within the meaning of § 643 of the Revised Statutes, before an indictment is found, and cannot be removed into the Circuit Court of the United States by a person arrested on a warrant from a justice of the peace with a view to his commitment to await the action of the grand jury. *Ib.*
3. Under the act of March 3, 1875, 18 Stat. 470, c. 137, a cause could not be removed from a state court, unless the application was made before or at the term at which it could first be tried. *Rosenthal* v. *Coates*, 142.
4. A cause could be removed on the ground of local prejudice, under Rev. Stat. § 639, sub-div. 3, only where all the parties to the suit on one side were citizens of a different State from those on the other. *Ib.*
5. In a suit by an assignee under an assignment for the benefit of creditors to disencumber a fund in his possession of alleged liens in favor of several different creditors, the fact that each defendant had a separate defence did not create a separable controversy as to each. *Ib.*
6. The removal acts do not contemplate that a party may experiment on his case in the state court, and, upon an adverse decision, then transfer it to the federal court. *Ib.*
7. Under the act of March 3, 1887, 24 Stat. c. 373, § 2, pp. 552, 553, a finding by the Circuit Court of the United States, on an application for the removal of a cause from a state court, that the application is sufficient, and such as entitles the defendant to remove the cause to a federal court, does not of itself work such removal, but an order of the court to that effect, equivalent to a judgment, must be made. *Pennsylvania Co.* v. *Bender*, 255.
8. A defendant, residing within a State in which an action is commenced in a court of the State, is not entitled, under the act of March 3, 1887, 24 Stat. 552, c. 373, to have the suit removed to the Circuit Court of the United States. *Martin* v. *Snyder*, 663.

See JURISDICTION, A, 6,
MANDAMUS, 1.

STATUTE.

A. CONSTRUCTION OF STATUTES.

If there were any doubt with regard to the interpretation of the act of March 3, 1869, 15 Stat. 324, c. 127, the construction placed upon it by the Land Department for eighteen years, under which lands have been put upon the market and sold, would be entitled to considerable weight. *United States* v. *Union Pacific Railway*, 562.

See EXECUTIVE.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 2;
CERTIORARI, 1, 4,
CONSTITUTIONAL LAW, 2;
CUSTOMS DUTIES, 1, 2;
INDIAN. 1,
INDIANA,
INTERNAL REVENUE, 1,
JURISDICTION, A, 5, 8; B, 1, C,
LETTER-CARRIER, 1, 2, 3, 4;
MANDAMUS, 2;
OFFICERS OF THE NAVY 1, 2;
PATENT FOR INVENTION, 11,
PUBLIC LAND, 1, 2, 3, 7,
REMOVAL OF CAUSES, 1, 2, 3, 4, 7, 8;
TELEGRAPH COMPANY, 2.

C. STATUTES OF STATES AND TERRITORIES.

Arkansas. *See* JURISDICTION, B, 5.
Colorado. *See* LOCAL LAW, 2.
Kansas. *See* MUNICIPAL BOND, 4.
Mississippi. *See* MUNICIPAL BOND, 1.
New York. *See* CONSTITUTIONAL LAW, 4.
Oregon. *See* TAX AND TAXATION, 4.
Tennessee. *See* BOUNDARY, 1.
Texas. *See* CONSTITUTIONAL LAW, 6.
Virginia. *See* BOUNDARY, 1.

SUBROGATION.

The plaintiffs, having been held liable to the owners of bonds improperly cancelled as parties to the transaction, are not entitled to be subrogated to the heirs of the estate in the suit against the United States; since a person who invokes the doctrine of subrogation must come into court with clean hands. *German Bank* v. *United States*, 573.

TAX AND TAXATION.

1. To make a tax sale valid, observance of every safeguard to the owner created by statute is imperatively necessary. *Marx* v. *Hanthorn*, 172.
2. When not modified by statute, the burden of proof is on the holder of a tax deed to maintain his title, when questioned, by showing that the provisions of the statute have been complied with. *Ib.*
3. It is competent for a legislature to declare that a tax deed shall be *prima facie* evidence, not only of the regularity of the sale, but also of all prior proceedings, and of title in the purchaser; but as the legislature cannot deprive one of his property by making his adversary's claim to it conclusive of its own validity, it cannot make a tax deed conclusive evidence of the holder's title to the land. *Ib.*
4. The reasonable meaning of the Oregon statutes regulating notices and sales of property for taxes, (Gen. Laws, ed. 1874, 767, §§ 90, 93, Hill's Ann. Laws, 1309,) is that such notice and advertisement should give the correct names of those whose property is to be sold. *Ib.*

5. Notice in Oregon that the property of Ida J. Hawthorn was to be sold was not only not notice that the property of Ida J. Hanthorn was to be sold, but was actually misleading, and such want of notice or misleading notice vitiated the sale. *Ib.*

See INTERNAL REVENUE,
TELEGRAPH COMPANY.

TELEGRAPH COMPANY.

1. A municipal charge for the use of the streets of the municipality by a telegraph company, erecting its poles therein, is not a privilege or license tax. *St. Louis* v *Western Union Tel. Co.*, 92.
2. A telegraph company has no right, under the act of July 24, 1865, c. 230, 14 Stat. 221, to occupy the public streets of a city without compensation. *Ib.*
3. This case presents no question of estoppel. *Ib.*
4. Whether such tax is reasonable is a question for the courts. *Ib.*

TENNESSEE.

See BOUNDARY.

TEXAS.

See LOCAL LAW, 4, 5.

TRUST.

See BANK;
INTERNAL REVENUE, 1.

VIRGINIA.

See BOUNDARY.

VOLUNTARY PAYMENT.

See CONTRACT, 8.

WASHINGTON AQUEDUCT.

See JURISDICTION, C.

WELL.

See JURISDICTION, C.